JUSTICE AND PUBLIC SAFETY CABINET

Parole Board

(Amended at ARRS Committee)

501 KAR 1:030. Determining parole eligibility.

RELATES TO: KRS 49.480, 119.025, 197.410(2), ***439.320,*** 439.340, 439.3401, 439.563, 532.043, 532.060, 532.080, 640.080

STATUTORY AUTHORITY: KRS 439.340(3)

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3)***(b)*** requires the Kentucky Parole Board to promulgate administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions.

(1) "Board" is defined by KRS 439.250(5).

(2) "Deferment" means a decision by the board that an inmate shall serve a specific number of months before further parole consideration.

(3) "Detainer" means a document, issued or made by a legal authority, authorizing the keeper of a prison or jail to keep the person named in the document in custody.

(4) "Parole" means the release of an inmate with a signed parole certificate to:

(a) The community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision; or

(b) Answer the detainer.

(5) "Parole eligibility date" means the date set by the board for conducting parole hearings at the location designated for an inmate's parole release hearing to take place during the month the inmate becomes eligible for parole.

(6) "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence.

(7) ***[("Parole for violent offender" is defined in KRS 439.3401.]***

[(8)] [("Physical injury" is defined in] [] [KRS] [500.080(17)] [500.080(13)] [.]

[(9)] [("Serious physical injury" is defined in KRS] [500.080(19)] [500.080(15)] [.]

[(10)] "Serve-out", "SOT", or "serve-out-time" means a decision of the board that an inmate shall serve until the completion of his sentence.

[(11)] [("SOTP" means Sex Offender Treatment Program.]

[Section 2.] [Ineligibility.]

[(1)] [An eligible sex offender, as defined in KRS 197.410(2), convicted prior to July 15, 1998 shall not be eligible for a parole consideration hearing unless:]

[(a)] [He has been denied entrance into the] [SOTP] [Sex Offender Treatment Program] [;]

[(b)] [He has been terminated from the SOTP; or]

[(c)] [He has successfully completed the SOTP.]

[(2)] [On or after July 15, 1998, a sex offender's eligibility shall be governed by KRS 197.045(4).] [(3)On or after July 15, 1998, a person confined to a state penal institution or county jail as a result of the revocation of his postincarceration supervision] [by the court] [pursuant to KRS 532.043 and 532.060 shall not be eligible for parole consideration.]

[(4)] [If an inmate is within] [ninety (90)] [sixty (60)] [days of being released by minimum expiration, administrative release, or maximum expiration at the time of his next scheduled parole hearing, the inmate shall not be eligible for parole.]

Section 2. ~~***[3.]***~~ Parole Eligibility.

(1) Initial parole review. ~~***[Except as provided by Section 2 of this administrative regulation, a]***~~

(a) ***A*** person confined to a state penal institution or county jail shall have his case reviewed by the board, in accordance with ***paragraph (b) or (c) of this subsection, unless parole eligibility is set by a statute, then the statute shall control.*** ~~***[following schedules:]***~~ ~~***[A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years shall have his or her case reviewed by the Parole Board upon reaching his or her parole eligibility date as established in KRS 439.340(3)(a).]***~~

(b) For a felony offense committed prior to December 3, 1980

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including life	6 years

(c) For a felony offense committed after December 3, 1980:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years
Persistent felony offender I in conjunction with a Class A, B, or C felony	10 years

(d) ***If a person is eligible for parole as described in paragraph (a) of this subsection, the Parole Board may, at the board's discretion, grant or deny parole based on the factors set forth in KRS 439.340, amendments thereto, or other applicable law.***

(e) The Board may order a serve out on the sentence at the initial parole review. ~~[For any crime, committed on or after July 15, 1986, but prior to July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:]~~

~~[Sentences of a number of years]~~	~~[50% of the sentence received or 12 years, whichever is less]~~
~~[Sentence of life]~~	~~[12 years]~~

~~[(e)] [For a crime:]~~

~~[1.] [Committed on or after July 15, 1998, which is a capital offense, Class A felony, or Class B felony where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1;]~~

~~[2.] [Committed on or after July 15, 2002, which is:]~~

~~[a.] [Burglary in the first degree accompanied by the commission or attempted commission of a felony sexual offense in KRS Chapter 510;]~~

~~[b.] [Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;]~~

~~[c.] [Burglary in the first degree accompanied by commission or attempted commission of kidnapping as prohibited by KRS 509.040; or]~~

~~[d.] [Robbery in the first degree;]~~

~~[3.] [Committed on or after July 12, 2006, which is:]~~

~~[a.] [A capital offense;]~~

~~[b.] [Class A felony;]~~

~~[c.] [Complicity to a Class A felony;]~~

~~[d.] [Class B felony involving the death of the victim or serious physical injury to a victim;]~~

~~[e.] [The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;]~~

~~[f.] [The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);]~~

~~[g.] [Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);]~~

~~[h.] [Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;]~~

~~[i.] [Promoting prostitution in the first degree as described in KRS 529.030(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;]~~

~~[j.] [Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;]~~

~~[k.] [Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or]~~

~~[l.] [Robbery in the first degree; or]~~

~~[4.] [Committed on or after June 26, 2007, which is:]~~

~~[a.] [A capital offense;]~~

~~[b.] [Class A felony;]~~

~~*[c.] [Complicity to a Class A felony;]*~~
~~*[d.] [Class B felony involving the death of the victim or serious physical injury to a victim;]*~~
~~*[e.] [The commission or attempted commission of a Class A or B felony sex offense in KRS Chapter 510;]*~~
~~*[f.] [The use of a minor in a sexual performance as described in KRS 531.310(2)(b) and 531.310(2)(c);]*~~
~~*[g.] [Promoting a sexual performance by a minor as described in KRS 531.320(2)(b) and 531.320(2)(c);]*~~
~~*[h.] [Unlawful transaction with a minor in the first degree as described in KRS 530.064(1)(a) when the minor is less than sixteen (16) years old or if the minor incurs physical injury;]*~~
~~*[i.] [Human trafficking as described in KRS 529.010(5)(b) when the victim is a minor;]*~~
~~*[j.] [Burglary in the first degree accompanied by the commission or attempted commission of an assault described in KRS 508.010, 508.020, 508.032, or 508.060;]*~~
~~*[k.] [Burglary in the first degree accompanied by the commission or attempted commission of kidnapping as prohibited by KRS 509.040; or]*~~
~~*[l.] [Robbery in the first degree]*~~

~~*[Sentence of a number of years]*~~	~~*[85% of sentence received or 20 years. whichever is less]*~~
~~*[Sentences of life]*~~	~~*[20 years]*~~

~~*[5.] [Committed on or after June 25, 2013, including:]*~~
~~*[a.] [Manslaughter under KRS 507.040 or Reckless Homicide under KRS 507.050 where a clearly identifiable peace officer or firefighter is killed in the line of duty:]*~~

~~*[Sentence Being Served] [At least 85% of the sentence imposed]*~~

~~*[b.] [Manslaughter under KRS 507.040 or Reckless Homicide under KRS 507.050 where a peace officer or firefighter is killed in the line of duty:]*~~

~~*[Sentence Being Served] [At least 50% of the sentence imposed]*~~

~~*[6.] [Committed on or after March 25, 2015, but prior to June 29, 2017, including:]*~~
~~*[a.] [Importing Heroin, under KRS 218A.1410;]*~~
~~*[b.] [Trafficking in Controlled Substance -- Heroin under KRS 218A.1412(3)(c);]*~~
~~*[c.] [Aggravated Trafficking -- Heroin under KRS 218A.142; or]*~~
~~*[d.] [Homicide or Fetal Homicide under KRS 507 or 507A due to overdose, under KRS 439.3401(3)(d):]*~~

~~*[Sentence Being Served] [At least 50% of the sentence imposed]*~~

~~*[7.] [Committed on or after June 29, 2017, but prior to July 14, 2022, including:]*~~

~~[a.] [Importing Heroin, Carfentanil, Fentanyl, or Fentanyl Derivatives under KRS 218A.1410;]~~
~~[b.] [Trafficking in Controlled Substance under KRS 218A.1412(3)(b)(2)(a);]~~
~~[c.] [Trafficking in Controlled Substance under KRS 218A.1412(3)(c); or]~~
~~[d.] [Aggravated Trafficking in Controlled Substance under KRS 218A.142:]~~

~~[Sentence Being Served] [At least 50% of the sentence imposed]~~

~~[8.] [Committed on or after July 14, 2018, including:]~~
~~[a.] [Criminal Gang Syndicate under KRS 506.120;]~~
~~[b.] [Enhancement of Criminal Gang-Related Felonies under KRS 506.170; or]~~
~~[c.] [Criminal Attempt to Commit Murder of a Peace Officer or Firefighter under KRS 439.3401:]~~

~~[Sentence Being Served] [At least 85% of the sentence imposed]~~

~~[9.] [Committed on or after June 27, 2019, including:]~~
~~[a.] [Manslaughter under KRS 507.040 or Reckless Homicide under KRS 507.050 where a clearly identifiable emergency medical services personnel is killed in the line of duty; or]~~
~~[b.] [Class B Criminal Attempt to Commit Murder where a clearly identifiable emergency medical services personnel is acting in the line of duty, regardless of whether injury occurs:]~~

~~[Sentence Being Served] [At least 85% of the sentence imposed]~~

~~[c.] [Manslaughter under KRS 507.040 or Reckless Homicide under KRS 507.050 where an emergency medical services personnel is killed in the line of duty:]~~

~~[Sentence Being Served] [At least 50% of the sentence imposed]~~

~~[10.] [Committed on or after July 14, 2022, including:]~~
~~[a.] [Class A or Class B Incest under KRS 530.020(2)(b) or (c);]~~
~~[b.] [Importing Carfentanil, Fentanyl, or Fentanyl Derivatives under KRS 218A.1410; or]~~
~~[c.] [Aggravated Trafficking in Controlled Substance under KRS 218A.142:]~~

~~[Sentence Being Served] [At least 85% of the sentence imposed]~~

~~[d.] [Aggravated Trafficking in Heroin under KRS 218A.142:]~~

~~[Sentence Being Served] [At least 50% of the sentence imposed]~~

~~[9.] [Committed on or after July 15, 2024, which is:]~~
~~[a.] [Commission or attempted commission of a Capital offense or Class A felony;]~~
~~[b.] [A felony involving the death or serious physical injury to a victim;]~~
~~[c.] [Burglary 1] [1st] [Degree under KRS 511.020 if a person other than a participant in the crime was present in the building during commission of the~~

~~*offense;*~~ ~~*]*~~

~~*[d.] [Robbery 2]*~~ ~~*[nd]*~~ ~~*[Degree under KRS 515.030;]*~~

~~*[e.] [Arson 1]*~~ ~~*[st]*~~ ~~*[Degree under KRS 513.020;]*~~

~~*[f.] [Strangulation 1]*~~ ~~*[st]*~~ ~~*[Degree under KRS 508.170;]*~~

~~*[g.] [Carjacking under KRS 515.040;]*~~

~~*[h.] [Class C Promoting Contraband 1]*~~ ~~*[st]*~~ ~~*[Degree under KRS 520.050.]*~~

~~*[i.] [Wanton Endangerment 1]*~~ ~~*[st]*~~ ~~*[Degree under KRS 508.060 involving the discharge of a firearm; or]*~~

~~*[j.] [Distribution of matter portraying a sexual performance by a minor under KRS 531.340:]*~~

~~*[Sentence Being Served] [At least 85% of the sentence imposed]*~~

](f)

1. For an individual serving multiple sentences, regardless of whether the sentences have been ordered to run concurrently or consecutively, parole eligibility shall be calculated based on the single conviction resulting in the latest parole eligibility date, except as otherwise provided in this administrative regulation.

2. Where a person is serving two (2) or more sentences that have been ordered to run consecutively and at least two (2) of those sentences require the same percentage of time to be served before becoming parole eligible, all consecutive sentences that require the same percentage of time to be served before becoming parole eligible shall be aggregated together before applying the percentage of time to be served.

3. Parole eligibility shall be calculated based on the latest parole eligibility date described in this administrative regulation. ~~*[For an individual serving multiple sentences, if one (1) or more of the crimes resulted in a conviction with committed under paragraph (e) of this subsection and one (1) or more of the crimes resulted in a conviction committed under paragraph (c) of this subsection, parole eligibility shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed or the sentencing of the offender for that crime, as applicable pursuant to statute.]*~~

(2) Subsequent parole review.~~*[Except as provided in KRS 439.340(14):]*~~

(a) After the initial review for parole, a subsequent review, during confinement, shall be at the discretion of the board***, except deferments shall not exceed the limits set in KRS 439.340(14)***; and

(b) The board~~*[, at the initial or a subsequent review,]*~~ may order a serve-out on a sentence ***at any subsequent parole review***.

(3) Parole review with new felony conviction.

(a) If a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration, he has not been discharged since his original admission, and if this new conviction will be served consecutively, the sentence received for the latter conviction shall be added to the sentence currently being served to determine his parole eligibility.

(b) ***If a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration, he has not been discharged since his original admission, and if the new conviction will be served concurrently but results in a later parole eligibility date, the later parole eligibility date shall apply.***

(c)

1. If a confined prisoner is a returned parole violator who receives an additional consecutive sentence, his parole eligibility shall be set on the length on the new sentence only, beginning from the date of his final sentencing, unless the board has previously set a new parole eligibility date.

2. If the board has previously set a new parole eligibility date, the parole eligibility date shall be the date which last occurs.

(d) ~~***[(c)]***~~ If parole is recommended, and a confined prisoner receives an additional sentence after board consideration, but before his release:

1. The recommendation of parole shall automatically be voided; and

2. The new parole eligibility date shall be set based upon the date of original admission on the aggregate sentences.

(4) Parole review for crimes committed while in an institution or while on escape. If an inmate commits a crime while confined in an institution or while on an escape and receives a concurrent or consecutive sentence for this crime, eligibility time towards parole consideration on the latter sentence shall not begin to accrue until he becomes eligible for parole on his original sentence. This shall include a life sentence.

(a) Except as provided by paragraph (b) of this subsection, in determining parole eligibility for an inmate who receives a sentence for an escape, a sentence for a crime committed while in the institution, or on a sentence for a crime committed while on an escape, the total parole eligibility shall be set by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:

1. The amount of time to be served for parole eligibility on the original sentence;

2. If the inmate has an additional sentence for escape, the amount of time to be served for parole eligibility on the additional sentence for the escape;

3. If the inmate has an additional sentence for a crime committed while in the institution, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while in the institution; and

4. If the inmate has an additional sentence for a crime committed while on escape, the amount of time to be served for parole eligibility on the additional sentence for the crime committed while on escape.

(b) If the board has previously set a parole eligibility date for an inmate described in paragraph (a) of this subsection, and that date is later than that set under paragraph (a) of this subsection, the later date shall be the parole eligibility date.

(c)

1. Except as provided by paragraph (b) of this subsection, if a confined prisoner who has previously met the board is given a deferment, escapes during the period of the deferment, and returns from that escape without a new sentence for the escape, the time out on the escape shall be added to the original deferment date to arrive at the new adjusted date.

2.

a. If the prisoner later receives a sentence for the escape, the previous deferment shall be automatically voided and the new parole eligibility date shall be set based on the new sentence beginning from the date of sentencing for the new sentence, unless the deferment date set by the board is a later date than that set based on the new sentence.

b. If the deferment date set by the board is a later date, the parole eligibility date shall be the date which last occurs.

(d) If an inmate receives a serve-out or deferment on his original sentence prior to receiving an <u>additional sentence for</u> escape ~~[sentence]~~ or a sentence for a crime committed while on escape or <u>while</u> confined in an institution, his parole eligibility date shall be set from the date of his new sentence or from the date previously set by the board, whichever occurs last.

(e) If an inmate receives a parole recommendation but escapes prior to being released, the parole recommendation shall be void. Upon return to a state institution, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines it may conduct a face-to-face hearing with this person at the institution with a ***[three (3) member]*** panel ***in accordance with the provisions of KRS 439.320***.

(5) Parole reviews for persons on shock probation or on prerelease probation. If a person is shock probated, or on prerelease probation, and is later returned to the institution as a shock probation violator or prerelease probation violator, his new parole eligibility shall be calculated by adding the period of time the inmate is on shock probation or prerelease probation to his original parole eligibility date.

(a) If a person on shock probation or prerelease probation is returned to the institution with a new consecutive sentence acquired while on shock probation or prerelease probation, he shall be eligible for a parole hearing if he has reached parole eligibility on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation or prerelease probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences. The time spent out on shock probation or prerelease probation shall not be included as part of the total period of time to be served for parole eligibility.

(b) If a person on parole is returned to the institution, has received a new sentence for a crime committed while on parole, and is probated or shock probated on the new sentence, the board shall, as soon as possible, conduct a file review and set or fix his parole eligibility date. If the board so determines, it may conduct a face-to-face hearing with this person at the institution with a panel ***in accordance with the provisions of KRS 439.320[of at least two (2) members]***.

Section 3. ***[4.]*** Emergency Authority. If the Commissioner of the Department of Corrections gives notice to the board of a need to relieve state prison or local jail overpopulation, the board may authorize the Commissioner to release one (1) or more persons who have been granted parole but who remain in custody solely to meet the time service requirements of this administrative regulation, if:

(1) Sixty (60) or fewer days remain between the date of the actual release and the date on which the inmate would otherwise be physically released on parole;

(2) The release would not result in a violation of a statutorily set minimum service of time requirement, including that set out for violent offenders under KRS 439.3401; and

(3) All other release requirements, including victim notification and re-entry planning, are completed.

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